

Minutes Excerpt

RESOLUTION 567

WHEREAS, Colorado Power Company has offered to deliver to the City of Lodi a deed conveying to said city certain riparian property of said corporation situated on the Mokelumne River in Amador and Calaveras Counties, in the State of California, which, in the judgment of the representatives of the said company and of this Council, is economically adapted and necessary as a site for the development of a municipally owned and operated hydro-electric power plant, to be constructed and operated as a project works by the City of Lodi in connection with, and to be made a part of, the present existing municipal electric distribution system of the City of Lodi; and

WHEREAS, the conditions attached to the tender of the said deed are that the City of Lodi accept the deed, conveying the property of the Colorado Power Company as hereinafter described and such title to the said property as the Colorado Power Company now has subject to certain conditions subsequent expressed in said deed, and that the settlement or dismissal of any litigation now pending, or which may follow the acquisition of title to the said property by the City of Lodi, affecting the riparian rights to the flow of the Mokelumne River through the said property, which rights are part and parcel of the said property, shall be satisfactory in terms to the Colorado Power Company and approved by it; and

WHEREAS, the City Council of the City of Lodi believes that the conditions attached to said offer of conveyance are reasonable, do not involve any present heavy commitment to expenditure by the City of Lodi, and should be accepted;

NOW, THEREFORE, be it, and it is hereby

RESOLVED, that said conditions attached to said tender be and they are hereby accepted, and that the Clerk of this Board is hereby authorized and directed to notify said Colorado Power Company, in writing, of such acceptance and to transmit to said company a copy of this resolution; and be it

FURTHER RESOLVED, that the said property, so conveyed to the City of Lodi in said deed is hereby appropriated and dedicated to public use, to-wit: as a site for the construction of a reservoir, power house, bus-yard, operators' quarters and other appurtenant structures to be designed, constructed and used in the generation of electric energy for the use of the City of Lodi and its inhabitants; and be it

FURTHER RESOLVED, that the City Engineer and the Superintendent of Public Utilities be and they are hereby authorized and directed to take such steps as in their judgment are necessary to determine expeditiously and finally the engineering phases of the proposed project works, and to initiate and press such other investigations and explorations as may be necessary, and report their findings to this Council at the earliest possible date; and be it

FURTHER RESOLVED, that the City Attorney be and he is hereby authorized and directed to prepare and submit to this Council a report setting forth in detail the legal procedure necessary for the presentation to the electorate of the City of Lodi of a plan for the financing, construction, and operation of the said proposed project works as herein set forth; and be it

FURTHER RESOLVED, that the City Attorney be and he is hereby authorized and directed to negotiate with the proper Federal and State authorities in the obtaining of information, permits, and licenses necessary and useful for the expedient determination of procedure and construction of the said project works as herein set forth; and be it

FURTHER RESOLVED, that the City Attorney be and he is hereby authorized and directed to take such steps and to commence, prosecute or defend any litigation which may be necessary for the protection of the rights of the City of Lodi in and to the riparian flow of the Mokelumne River upon the premises so conveyed and to associate said Colorado Power Company as a party to said litigation wherever and whenever he shall deem it necessary for the protection of the interests of the City of Lodi and the contingent interest of the Colorado Power Company; and be it

FURTHER RESOLVED, that none of the said litigation, if and when brought or defended, shall be settled or dismissed during the period of the retention of the said reversionary interest by the Colorado Power Company, except upon such terms and conditions as are satisfactory to the Colorado Power Company and to the City of Lodi; and be it

BE IT FURTHER RESOLVED, that the City of Lodi covenants and agrees that, if the said property should return to the Colorado Power Company by reason of the breach of any condition subsequent in the deed, the City of Lodi will transfer to Colorado Power Company at the time the said condition subsequent becomes operative any claim for damages to the property, then existing in favor of the City of Lodi against any person, firm, corporation, municipal corporation, or body, on account of any diversion of waters, or invasion of riparian rights, and that the Colorado Power Company shall be entitled to such transfer of any claim for damages at that time; and that the City recognizes that the continued existence of the property with the water rights intact is the sole security to the Colorado Power Company for performance of the conditions subsequent in said grant, and that therefore until the grantee shall have fully complied with said conditions subsequent the Colorado Power Company is entitled to any amount of damages awarded by judgment, or as the result of settlement, for the taking of any water from the property, or invasion of the water rights connected therewith; and

BE IT FURTHER RESOLVED, that the Clerk of this Board be and he is hereby authorized and directed to transmit a certified copy of this resolution to the Colorado Power Company, as evidence of the acceptance of its offer, and to cause the deed accepted by the terms hereof to be forthwith recorded in the offices of the County Recorders of Amador and Calaveras Counties, State of California.

FURTHER RESOLVED, that the City of Lodi covenants and agrees that it will not voluntarily sell or convey the property conveyed and deeded to the City by the Colorado Power Company, or any part thereof, or any interest therein, unless it be to such municipal or public utility district as may hereafter be organized which shall include the City of Lodi and which shall serve the City of Lodi and its environs with electric energy, and then only upon acceptance by said district of the same conditions as are herein accepted; but if, however, the title to the said property, or any part thereof, or any interest therein, should be involuntarily transferred by adverse proceedings, to any other person, firm, corporation or public body than the one hereinabove last mentioned, whereby the reversion of the title in the Colorado Power Company by reason of failure of the grantee in said deed to comply with the conditions subsequent therein inserted, should be rendered impossible, then, out of any compensation or damages which may be awarded by a court or jury or in settlement of litigation for the taking or damaging of said premises, there shall be paid to the City of Lodi the total cost of improvements placed on said property, (but in no event more than the portion of said award specifically covering improvements), and twenty-five percent of any balance over and above said amounts, and there shall be paid directly to the Colorado Power Company seventy-five per cent of the entire balance over and above said cost as so limited.